

NOT DESIGNATED FOR PUBLICATION
ARKANSAS COURT OF APPEALS

DIVISION II
No. CACR07-1315

JORGE HERNANDEZ,

APPELLANT

V.

STATE OF ARKANSAS,

APPELLEE

Opinion Delivered AUGUST 27, 2008

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT,
[NO. CR-2007-15-2]

HONORABLE DAVID CLINGER,
JUDGE,

DISMISSED

SAM BIRD, Judge

By the circuit court's judgment of September 6, 2007, Jorge Hernandez was convicted of possession of cocaine and second-offense driving while intoxicated. He appeals the convictions, raising two points. He contends that his previous attorney's incorrect legal advice about the consequences of a guilty plea on his immigration status constituted ineffective assistance of counsel. He also contends that he did not voluntarily, intelligently, and knowingly waive his right to trial by jury and enter into the negotiated plea agreement. We do not address these points for the following reasons.

Generally, under Arkansas Rule of Appellate Procedure—Criminal 1, there is no right to appeal a guilty plea, except for a conditional plea of guilt premised on an appeal of the denial of a suppression motion pursuant to Arkansas Rule Criminal Procedure 24.3. *Seibs v. State*, 357 Ark. 331, 166 S.W.3d 16 (2004). Two other exceptions, as set out in *Seibs* and

Bradford v. State, 351 Ark. 394, 94 S.W.3d 904 (2003), also allow an appeal from a guilty plea: (1) when there is a challenge to testimony or evidence presented before a jury in a sentencing hearing separate from the plea itself; and (2) when the appeal is an appeal of a postjudgment motion to amend or correct an illegal sentence. *Seibs*, 357 Ark. at 334, 166 S.W.3d at 17; *Bradford*, 351 Ark. at 399, 94 S.W.3d at 907. The present case does not fall within any of these exceptions.

Even if this case did come within one of the exceptions to the prohibition of appealing from a guilty plea, we could not address the points Hernandez now raises. Citing federal statutes that purportedly subject him to deportation as a result of his drug conviction, Hernandez argues that he was misadvised by counsel about a guilty plea's effect on his immigration status as a lawful permanent resident. He also argues that this incorrect advice resulted in his decision to waive his right to a jury trial and to plead guilty. Ineffective-assistance arguments can be raised on direct appeal only if 1) the issue was first raised during trial or in a motion for new trial, and 2) the facts and circumstances were fully developed either during trial or other hearings before the trial court. *Rackley v. State*, 371 Ark. 438, ___ S.W.3d ____ (2007). Because Hernandez's claim of ineffective counsel was neither raised nor developed in the trial court, the merits of his claim cannot be addressed on appeal.¹

Appeal dismissed.

GLOVER and MARSHALL, JJ., agree.

¹Had Hernandez raised the issue of ineffective assistance of counsel in a Rule 37 petition, jurisdiction of his appeal would lie with our supreme court. *See* Ark. Sup. Ct. R. 1-2(a).